IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE J.B.KOSHY
&
THE HONOURABLE MRS. JUSTICE K.HEMA

WEDNESDAY, THE 31ST OCTOBER 2007 / 9TH KARTHIKA 1929

MFA.No. 1024 of 2002

WCC.89/1991 ORDER OF THE COMMISIONER FOR OF WORKMEN'S COMPENSATION AND DEPUTY LABOUR COMMISIONER, KOTTAYAM
.....

APPELLANT: APPLICANT

P.K.KUNJUMON, S/O. KITTAN,
PUTHUPARAMBIL HOUSE, PATHAMUTTOM P.O.,
PAPPANCHIRA, KURICHY VILLAGE, CHANGANACHERRY

BY ADV. SRI.P.RAVINDRA BABU
SRI.SURIN GEORGE IPE

RESPONDENTS: 1ST OPPISITE PARTY/ ADDL. 2ND PARTY
----

1. C.K. JOHNY, CHOORAMATTATHIL HOUSE,
ARAKKUNAM P.O., ERNAKULAM DISTRICT

2. DIVISIONAL RAILWAY MANAGER (WORKS)
SOUTHERN RAILWAY, THIRUVANANTHAPURAM

BY

THIS MISC. FIRST APPEAL HAVING BEEN FINALLY HEARD ON 31/10/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

J.B. KOSHY & K.HEMA, JJ.

M.F.A.No. 1024 of 2002

Dated this the 31st day of October, 2007

Judgment

Koshy,J.

Appellant filed an application under section 22 of the Workmen's Compensation Act claiming a lump sum compensation of Rs.50,000/- on account of personal injuries suffered by him in an accident arising out of and in the course of his employment as a metal worker under the first respondent. According to the appellant, he was working under the first respondent at Changanassery and on 1.3.1991 at about 2.00 p.m. while he was working, one piece of small metal struck his left eye causing complete damage of the eye losing sight of the left eye. He was aged 33 years and was getting an average monthly wages of Rs.1,500/- and claimed a compensation of Rs.50,000/- for the injuries sustained to the appellant in the course of his employment. It is the contention of the appellant that first respondent was working as a contractor for the second respondent Railways. The Commissioner for Workmen's Compensation after going into the evidence found that there was no evidence to show that the

accident occurred as alleged. It was also found that the first respondent entered contract as per agreement dated 21.2.1991 at Changanassery for doing certain works. Since he had abandoned the work, contract was terminated with effect from 13.1.1992 and as per the list of employees submitted by the first respondent, no such employee by name P.K. Kunjumon was employed. Further, as per the contract work, no metal work was in progress on the alleged date. After detailed consideration of the matter, the Commissioner found as follows:

> "It is an admitted fact that first opposite party was a railway contractor for the work stipulated in Ext.R1. Two types of work, i.e., 'A schedule and B schedule' work are to be done as per the conditions of contract. In 'A schedule' collection and stacking of 50 mm ballast along side the track on road No.1, Changanassery Railway Station to an extent of 825 m3 whereas in 'B schedule' removing of Moorum from Track No.1 and dumping the collected 50 mm ballast are specified. Exts.R1, R2 and R3 show that the date of the work as 15.11.1999 and that the date of first measurement as on 25.2.1991. As per Ext.R3 the measurement book, 481 m3 ballast out of the total 825 m3 was measured on that day. Ext.R5 is the copy of the letter dated 25.2.1991 sent by the first opposite party to the Permanent Way Inspector, Mavelikara requesting Speed Restriction Permission in Road No.1. This letter, i.e., Ext.R6 is admitted as per Ext.R9s, i.e., the award dated 17.10.1999 issued by the arbitrator in compliance of the directions of the Hon'ble Additional Sub Judge, Kottayam in

> Writ Petition No. O.P. (Arb.) No.46 of 1993. Also this letter is not challenged by the applicant. As per this letter, the ballast collection for the contract work was completed as on 25.2.1991l and the next quantity of ballast was awaiting for stacking and taking measurement by the authority. This shows that the breaking of metals was completed on that day and the first opposite party was seeking track permission to commence his work specified in 'B schedule'. This shows that the breaking of metals is competed by 25.2.1991. Therefore the claim of the applicant that he sustained injuries due to an accident, while breaking metals on 1.3.1991 gives serious doubt regarding his employment."

First respondent also stated that no accident occurred and claimant was not employed by him. He also stated that if any accident had occurred while doing work of the Railways, it would be reported to the Railways. Here, no such accident was reported. Further, a pocket book was issued to all employees showing the wages received etc. But, no such book was produced by the claimant. It was further held as follows:

> "It is stated that the applicant was firstly taken to Changanacherry Government Hospital and from there he was referred to Kottayam Medical College Hospital. But, no document is produced to prove that he was brought to Changanacherry Hospital and was referred from there. A copy of the wound certificate or some other document from the Changanacherry hospital may have connect the injury with the claimed employment at Changanacherry.

> Though this factor was raised during cross-examination of the applicant by the first opposite party, no such document was produced."

Therefore, the Commissioner found that there is no employer-employee relationship with the claimant and the first respondent and there is no evidence to show that the accident occurred during the course of employment and claimant is not entitled to workmen's compensation benefits. These are findings of fact based on evidence. The Commissioner has extensively considered the evidence under section 30 of the Workmen's Compensation Act. The appeal is maintainable only if there is question of law. Hence, appeal is not maintainable.

We also note that even though appeal was admitted, so far no process was served and notice was not served on the opposite parties. In these circumstances, we dismiss the appeal.

J.B.KOSHY
JUDGE

K. HEMA
JUDGE

vaa

J.B. KOSHY AND
K.HEMA,JJ.

M.F.A. No. 1024 of 2002

Judgment

Dated:31st October, 2007